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1. The amendment filed September 15, 2009 after a decision by the Board of Patent Appeals and Interferences is not entered because *prosecution is closed and the proposed amendment was not suggested in an **explicit** statement by the Board under 37 CFR 41.50(c)*. As provided in 37 CFR 1.198, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner after a final decision of the Board except under the provisions of 37 CFR 1.114 (request for continued examination) or 37 CFR 41.50 without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

2. The amendment filed September 15, 2009, *i.e.*, after the Board decision on September 2, 2009 is not entered for the reasons, *inter alia*, listed below:

(a) Applicant contended:

During the Applicant's argument, the Board raised that the "second section" of the Applicant's invention was a "resting support" and the Anson attachment was not resting support but this fact had not been raised during prosecution. This was understood by Applicant as a distinguishing feature between the claims of the present application on appeal and Anson.

Applicant will demonstrate herein that the claims, as amended, are patentable over Anson.

The Examiner respectfully submits that Applicant did not point out specifically where the support for Applicant's statement: "[d]uring the Applicant's argument, the Board raised that the 'second section' of the Applicant's invention was a 'resting support' and the Anson attachment was not resting support but this fact had not been raised during prosecution" may be found in the Record of Oral Hearing on August 13, 2009. As noted, an expert's opinion on the ultimate legal

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issue must be supported by some thing more than a conclusory statement. *In re Buchner*, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991). If Applicant has evidence of such support, Applicant is respectfully suggested to specifically point out the line(s) and page(s) of the transcript of the oral hearing to provide such support;

(b) A review of the Record of Oral Hearing and the Board decision shows that the Board did not make an *explicit* suggestion under 37 CFR 41.50(c) that if Applicant amends claim 20 to change the limitation: “the second section *for supporting* at least a portion of a vehicle operator’s body” to “the second section *for providing resting support for* at least a portion of a vehicle operator’s body,” it would distinguish between the claims of the present application and Anson reference. In other words, the Board did not explicitly suggest that such changes in claim 20 would render this case in the condition for allowance as Applicant requested; and

(c) The new functional limitation “*for providing resting support*” in claims 20 and 22, the new limitations “the first and second first sections are deformable” in amended claim 28/20 raise new issues that would require further consideration and/or search under 35 USC 102 and/or 103 in view of Supreme Court decision in *KSR Int’l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007).

In view of the foregoing, the Examiner respectfully declines to enter the instant amendment pursuant to MPEP § 1214.07.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Vinh T Luong/
Primary Examiner, Art Unit 3656